

Message Text

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SUBJ: FOREIGN REGULATIONS ON FOREIGN BROKERS AND UNDERWRITERS

REF: STATE 79749

SUMMARY: PRIOR TO 1965, STOCK BROKERS WERE BRAZILIAN INDIVIDUALS APPOINTED BY PRESIDENTIAL DECREE. LAW 4,728/65 NOW PERMITS FORMATION OF BROKERAGE FIRMS, SUBJECT TO CENTRAL BANK AUTHORIZATION. NO LEGAL PROHIBITION AGAINST FOREIGN PARTICIPATION IN CAPITAL OF BROKERAGE FIRMS (CORRETORA) EXISTS, BUT CENTRAL BANK, ACTING UNDER GUIDANCE OF NATIONAL MONETARY COUNCIL, HAS COMPLETE DISCRETION TO PERMIT OR REFUSE SUCH PARTICIPATION. FINANCIAL CIRCLES BELIEVE CENTRAL BANK UNLIKELY PERMIT NEW FOREIGN PARTICIPATION.

UNDERWRITING CAN BE DONE BY INVESTMENT BANKS, BROKERAGE FIRMS OR SECURITIES DISTRIBUTING COMPANIES (DISTRIBUIDORAS). THESE ENTITIES ARE SUBJECT TO CENTRAL BANK REGULATIONS. CURRENT LEGISLATION DOES NOT RESTRICT FOREIGN PARTICIPATION IN THESE INSTITUTIONS. NEVERTHELESS, CENTRAL BANK HAS, IN PRACTICE, LIMITED PARTICIPATION OF FOREIGN CAPITAL IN INVESTMENT BANKS TO ABOUT 33 PERCENT, AND IS REPORTEDLY BLOCKING ANY NEW FOREIGN PARTICIPATION IN BROKERAGE FIRMS. FOREIGN FINANCIAL GROUPS OPERATING IN BRAZIL HAVE, HOWEVER, FORMED SECURITIES DISTRIBUTING COMPANIES. THERE IS PRESENTLY NO RESTRICTION ON
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INVESTMENT BANKS OR SECURITIES DISTRIBUTING COMPANIES WITH MINORITY FOREIGN PARTICIPATION. END SUMMARY.

1. LEGISLATION: BASIC LEGISLATION IS:

A) LAW 4,595 OF DECEMBER 31, 1964;

B) LAW 4,728 OF JULY 14, 1965;

C) IMPLEMENTING REGULATIONS: CENTRAL BANK RESOLUTION NO. 39 OF OCTOBER 20, 1966, AND CIRCULAR NO. 76 OF FEBRUARY 22, 1967.

2. BROKERS: PRIOR TO 1965, STOCK BROKERS WERE BRAZILIAN INDIVIDUALS APPOINTED BY PRESIDENTIAL DECREE. LAW 4,728 RESTRUCTURED BRAZILIAN SECURITIES MARKET ALLOWING FORMATION OF STOCK BROKERAGE COMPANIES. REGISTRATION WITH CENTRAL BANK IS REQUIRED PRIOR TO INITIATING OPERATIONS. BROKERS HAVE EXCLUSIVE RIGHT TO OPERATE ON STOCK EXCHANGES. TO DO SO, THE FIRM MUST BUY A STOCK EXCHANGE QUOTE SHARE UNQUOTE WHICH WILL SERVE AS A GUARANTEE FOR ITS DEBT. NATIONAL MONETARY COUNCIL ESTABLISHES THE NUMBER OF MEMBERS ON EACH STOCK EXCHANGE. DIRECTORS OF BROKERAGE FIRMS MUST BE BRAZILIANS OR FOREIGNERS RESIDENT IN BRAZIL. THE JOINT SHAREHOLDING OF THE DIRECTORS OF A BROKERAGE FIRM CANNOT BE LESS THAN ONE HALF OF THE VOTING CAPITAL. CURRENTLY, CENTRAL BANK IS NOT AUTHORIZING FORMATION OF NEW BROKERAGE FIRMS. A FOREIGN FIRM WISHING TO OPERATE IN THIS FIELD WOULD HAVE TO ACQUIRE A PARTICIPATION IN AN EXISTING BROKERAGE FIRM, WHICH IS A TRANSACTION SUBJECT TO CENTRAL BANK APPROVAL. ALTHOUGH THERE IS NO LEGAL PROHIBITION AGAINST FOREIGN PARTICIPATION IN THE CAPITAL OF A BROKERAGE FIRM, CENTRAL BANK HAS COMPLETE DISCRETION TO PERMIT OR REFUSE SUCH PARTICIPATION. FINANCIAL CIRCLES BELIEVE CENTRAL BANK UNLIKELY PERMIT NEW DIRECT FOREIGN PARTICIPATION. AS FAR AS CONGEN RIO HAS BEEN ABLE TO ASCERTAIN, A VERY FEW (TWO OR THREE) BROKERAGE FIRMS MAY CURRENTLY HAVE LINK WITH FOREIGN INTERESTS. SEVERAL FOREIGN INVESTMENT BANKS ARE RUMORED, HOWEVER, TO BE NEGOTIATING WITH BRAZILIAN HOLDING COMPANIES THAT OWN BROKERAGE FIRMS. IF NEGOTIATIONS ARE SUCCESSFUL, AND CENTRAL BANK CONCURS, FOREIGN INVESTMENT BANKS WOULD THUS ACQUIRE INDIRECT OWNERSHIP IN BRAZILIAN BROKERAGE.

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3. UNDERWRITERS: UNDERWRITING CAN BE PERFORMED IN BRAZIL BY THREE TYPES OF FINANCIAL INSTITUTIONS, I.E., (A) INVESTMENT BANKS, (B) BROKERAGE FIRMS, AND (C) SECURITIES DISTRIBUTING COMPANIES. THESE ENTITIES ARE SUBJECT TO CENTRAL BANK REGULATIONS.

(A) CURRENT LEGISLATION DOES NOT RESTRICT FOREIGN PARTICIPATION IN INVESTMENT BANKS. NEVERTHELESS, UNDER GUIDANCE OF NATIONAL MONETARY COUNCIL, CENTRAL BANK HAS FOLLOWED POLICY OF LIMITING PARTICIPATION OF FOREIGN CAPITAL IN INVESTMENT BANKS TO ABOUT

33 PERCENT (SEE BRASILIA 2467).

(B) PARAGRAPH TWO ABOVE DEALT WITH FOREIGN PARTICIPATION
IN BROKERAGE FIRMS.

(C) SOME FOREIGN BANKING GROUPS OPERATING IN BRAZIL HAVE FORMED
THEIR OWN SECURITIES DISTRIBUTING COMPANIES, USUALLY LINKED
TO THEIR FINANCE COMPANY OR INVESTMENT BANK. HOWEVER, SINCE
THE CAPITAL OF THESE COMPANIES IS SMALL COMPARED TO INVESTMENT
BANKS OR BROKERAGE FIRMS, SECURITIES DISTRIBUTING COMPANIES
HAVE NOT USUALLY ACTED AS UNDERWRITERS. IN THOSE CASES WHERE
THEY HAVE PARTICIPATED IN UNDERWRITING, THEY HAVE TAKEN VERY
SMALL PART, LEAVING MAJOR BURDEN TO THEIR ASSOCIATED
INVESTMENT BANK. THERE HAS BEEN NO SPECIAL RESTRICTION ON
THE ACTIVITIES OF INVESTMENT BANKS OR SECURITIES DISTRIBUTING
COMPANIES ASSOCIATED WITH FOREIGN FINANCIAL INSTITUTIONS.

4. OTHER INDIRECT CONTROLS: RESTRICTIONS ON THE INTRODUCTION
OF FOREIGN STAFF (FOREIGNERS RESIDENT IN BRAZIL) APPLY TO ALL
COMPANIES OPERATING IN BRAZIL. TWO-THIRDS OF A COMPANY'S
LABOR FORCE MUST BE BRAZILIAN.

5. STATE AND LOCAL AGENCIES HAVE NO SPECIFIC REGULATIONS OR
CONTROL OVER BROKERAGE OR UNDERWRITING OPERATIONS.
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